IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1009 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAWAL AMRAT DHANABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1009 of 1997

MR G RAMAKRISHNAN for Petitioner No. 1 - Absent

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 14/08/2001

ORAL JUDGEMENT

This is an appeal of 1997, which is listed today for the tenth time. When it was placed before this Court on 24th July, 2001, the hearing of this appeal was adjourned on the ground that Mr. Ramakrishnan appearing

as amicus curiae for the appellant accused was sick. On 7.8.2001 again it was kept for hearing today. In the morning when the matter was called out, Mr. Ramakrishnan was not present and therefore it was kept after recess. After recess when the matter was called out, no one remained present for the appellant accused and therefore, this appeal is heard and finally decided with the due assistance of learned APP Shri N.D Gohil.

The appellant accused has challenged in this appeal the judgement and order of conviction and sentence dated 30.11.1996 passed by the learned Additional Sessions Judge, Mehsana, whereby he convicted the appellant accused for the offences under Sections 376 and 506 (2) IPC. For the offence under Section 376, the learned Additional Sessions Judge has sentenced the accused to suffer RI for 7 years and imposed fine of Rs. 500, in default to further undergo SI for 3 months. For the offence under Section 506(2), the accused was sentenced to suffer RI for 6 months and to pay fine of Rs. 200/-, in default to further undergo one month SI. Both substantive sentences were ordered to run concurrently.

It is the case of the prosecution that on 7.4.1996, prosecutrix Kokilaben was alone in her house and at that time accused entered the house and closed the door from inside and committed forcible rape on her for which the complaint was filed on the next day. As per the School leaving certificate, at the time of offence, she was only 14 years as her birth-date was 1.6.1981. Evidence of Dr. Dave, P.W 1 who has examined on the point of her age also opined that she was below 16. Serologist's report also supports the case of the prosecution regarding rape on the prosecutrix. Dr. Gupta P.W 10 who has examined prosecutrix after the complaint was lodged clearly stated that there was a forcible rape on her. He has clearly denied the suggestion made to him in his cross-examination that she was used to sexual intercourse and the abrasion on her right chest is a self-inflicted injury.

Having carefully gone through the evidence of prosecutrix Kokilaben, it is clear that when she was examined before the learned Judge, the learned Judge having a bare look at her found to be minor. Therefore, before giving her oath, she was asked whether she can understand the questions or not and after being satisfied the learned Judge recorded her evidence. There are some minor discrepancies in her evidence, but that would not help the accused. In most natural manner she has deposed

before the Court. In the evening of that fateful day when her parents returned, she informed them about the incident. Next day when they went to the accused to ask about the incident, at that time quarrel took place between them, wherein the prosecutrix herself received bleading injury on her head. It was thereafter only complaint under Section 376 IPC was filed. It is not expected in cases of rape that one immediately rush to the Police Station and lodge the complaint. This type of incidence are common in our country where first the party may try to settle the matter or try to seek clarification from the other side and if it is not materialised then only as a last resort they approach the Police.

In the instant case the defence has examined Ushaben who is stated to be a friend of Kokilaben, on the point of presence of the prosecutrix at her place on the date and time of the incident. Her evidence was not relied upon by the learned Judge and in my considered opinion, rightly so. She has clearly admitted that at the instance of Geevarbhai she has come to the Court for deposing. An attempt was made to defame the charater of prosecutrix Kokilaben but that was clearly ruled out by the definite evidence of Dr. Dave, who has clearly stated in her evidence that prosecutrix was not used to sexual intercourse.

In view of the above, if the learned Judge has found the accused guilty for the offence under Sections 376 and 506(2) IPC and convicted the accused and sentenced to 7 years RI and 6 months RI for the aforesaid offences respectively, then this Court cannot interfere with such order of conviction in the appeal.

In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas